

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 DIANN SOKOLOFF
Deputy Attorney General
4 State Bar No. 161082
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2212
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2010 - 434

13 **MICHAEL BRENDAN MIYAKI**
1333 Gough Street, Apartment 4H
San Francisco, California 94109
14 **Registered Nurse License No. 552674**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about March 1, 1999, the Board of Registered Nursing issued Registered Nurse
22 License Number 552674 to Michael Brendan Miyaki (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

...

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in

1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
2 thereof.

3 . . .

4 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries
5 in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of
6 this section.”

7 7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
8 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
9 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
10 Code, the Board may renew an expired license at any time within eight years after the expiration.

11 8. Section 4140 of the Code states:

12 “No person shall possess or have under his or her control any hypodermic needle
13 or syringe except when acquired in accordance with this article.”

14 9. Health and Safety Code section 11350 states, in pertinent part, that possession of a
15 controlled substance which is a narcotic drug, unless upon the written prescription of a doctor
16 shall be punished by imprisonment.

17 10. Health and Safety Code section 11170 states, in pertinent part, that no person shall
18 prescribe, administer, or furnish a controlled substance for himself.

19 11. Health and Safety Code section 11173, provides

20 “(a) no person shall obtain or attempt to obtain controlled substances, or procure or
21 attempt to procure the administration of or prescription for controlled substances,

22 (1) by fraud, deceit, misrepresentation, or subterfuge; or

23 (2) by the concealment of a material fact.

24 “(b) no person shall make a false statement in any prescription, order, report, or
25 record, required by this division.

26 12. Section 490 of the Code provides, in pertinent part, that a board may suspend or
27 revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 13. Title 16, California Code of Regulations, section 1442, states:

4 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
5 departure from the standard of care which, under similar circumstances, would have ordinarily
6 been exercised by a competent registered nurse. Such an extreme departure means the repeated
7 failure to provide nursing care as required or failure to provide care or to exercise ordinary
8 precaution in a single situation which the nurse knew, or should have known, could have
9 jeopardized the client's health or life."

10 14. Title 16, California Code of Regulations, section 1443 states that as used in section
11 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that
12 degree of learning, skill, care and experience ordinarily possessed and exercised by a competent
13 registered nurse as described in section 1443.5

14 15. Title 16, California Code of Regulations, section 1443.5 states:

15 "A registered nurse shall be considered to be competent when he/she
16 consistently demonstrates the ability to transfer scientific knowledge from social, biological and
17 physical sciences in applying the nursing process, as follows:

18 "(1) Formulates a nursing diagnosis through observation of the client's physical
19 condition and behavior, and through interpretation of information obtained from the client and
20 others, including the health team.

21 "(2) Formulates a care plan, in collaboration with the client, which ensures that
22 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
23 protection, and for disease prevention and restorative measures.

24 "(3) Performs skills essential to the kind of nursing action to be taken, explains
25 the health treatment to the client and family and teaches the client and family how to care for the
26 client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

17. "Hydromorphone" is a Schedule II controlled substance as listed in Health and Safety Code section 11055(b)(1)(K), and is a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by a prescription. Hydromorphone is a generic name for Dilaudid, a drug which is indicated in the treatment of moderate to severe pain.

18. "Morphine" is a Schedule II controlled substance as listed in Health and Safety Code section 11055(b)(1)(M), and is a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by a prescription. Morphine is a drug which is indicated in the treatment of moderate to severe pain.

19. "Lorazepam" is a Schedule IV controlled substance as listed in Health and Safety Code section 11057(d)(1), and is a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by a prescription. Lorazepam is a drug

1 which is indicated in the treatment of anxiety with depression and/or acute alcohol withdrawal
2 symptoms.

3 20. "Methadone Tablets" are Schedule II controlled substances as listed in Health and
4 Safety Code section 11055(b)(14), and are dangerous drugs according to Business and
5 Professions Code section 4022 in that they can be lawfully dispensed only by a prescription.
6 Methadone Tablets are indicated for the detoxification treatment of opioid addiction, and for
7 maintenance of opioid addiction.

8 **FIRST CAUSE FOR DISCIPLINE**
9 **(Unprofessional Conduct-Unlawfully Obtaining and Possessing Controlled Substances)**
10 **(Bus. & Prof. Code § 2762(a))**

11 21. Respondent's conduct in unlawfully obtaining and possessing controlled substances
12 by diversion from the UCSF Mt. Zion hospital supply is in violation of Health and Safety Code
13 sections 11170, 11173 and 11350, constitutes unprofessional conduct within the meaning of Code
14 section 2762(a), and provides grounds for disciplinary action under Code section 2761(a). The
15 circumstances are as follows:

16 a. In August 2007, respondent was employed as a registered nurse and worked at
17 UCSF Mt. Zion in San Francisco. On or about August 27, 2007, the Charge Nurse reported to
18 Silvia Andrade, RN, Patient Care Manager, that on August 25, 2007, two nurses discovered that
19 someone had tampered with a vial of Hydromorphone in a Pyxis machine (a security controlled
20 drug-dispensing machine). The safety cap had been removed and replaced on the vial. The
21 pharmacy tested the vial and determined that the Hydromorphone had been replaced with normal
22 saline. An investigation ensued. The investigation revealed problems with respondent's Pyxis
23 activities report. Respondent had made two "Cancelled Refill" entries in the Pyxis machine, on
24 August 7 and August 24, 2007, respectively, a task exclusively reserved for pharmacy staff. In
25 addition, respondent made several suspicious "Cancelled Remove" entries in the Pyxis machine,
26 on August 8, 10 (three separate entries), 15, 22, 27, and 28, 2007. A "Cancelled Remove" entry
27 indicates that a nurse withdrew medication for a patient from Pyxis and then decided not to
28 administer it.

1 b. Respondent was interviewed as part of the investigation. During the interview,
2 respondent admitted to diverting the Hydromorphone for personal use. Respondent stated that he
3 began diverting controlled substances after his return to work from medical leave on July 9, 2007,
4 and that he was sorry and accepted responsibility for his actions. The hospital referred
5 respondent to an in-house drug treatment and rehabilitation program and placed him on Medical
6 Leave of Absence.

7 c. Respondent attended only one session in the drug treatment and rehabilitation
8 program. Ms. Andrade attempted to contact respondent many times, but to no avail. Respondent
9 was terminated for job abandonment, and failing to abide by the terms and conditions of the
10 Faculty Staff Assistance Program.

11 **SECOND CAUSE FOR DISCIPLINE**
12 **(Unprofessional Conduct)**
13 **(Bus. & Prof. Code § 2761(a))**

14 22. Complainant realleges the allegations contained in paragraph 21 above,
15 and incorporates them herein by reference as if fully set forth.

16 23. Respondent's conduct in unlawfully obtaining and possessing controlled substances
17 by diversion from the hospital supply, as alleged in paragraph 21 above, constitutes
18 unprofessional conduct and provides grounds for disciplinary action under Code section 2761(a).

19 **THIRD CAUSE FOR DISCIPLINE**
20 **(Unprofessional Conduct-Falsify Hospital Records)**
21 **(Bus. & Prof. Code § 2762(e))**

22 24. Complainant realleges the allegations contained in paragraph 21 above,
23 and incorporates them herein by reference as if fully set forth.

24 25. Respondent's conduct in falsely documenting or recording the disposition of
25 controlled substances constitutes unprofessional conduct within the meaning of Code section
26 2762(e), and provides grounds for disciplinary action under Code section 2761(a).

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**
2 **(Gross Negligence and/or Incompetence)**
3 **(Bus. & Prof. Code § 2761(a)(1))**

4 26. Complainant realleges the allegations contained in paragraph 21 above,
5 and incorporates them herein by reference as if fully set forth.

6 27. Respondent has subjected his license to disciplinary action for unprofessional conduct
7 under Code section 2761(a)(1), in that he committed gross negligence and/or incompetence
8 within the meaning of California Code of Regulations, title 16, sections 1442 and 1443
9 respectively as described in paragraph 18, above.

10 **FIFTH CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct)**
12 **(Bus. & Prof. Code § 2762(a))**

13 28. Respondent's conduct in unlawfully obtaining and possessing controlled substances
14 by diversion from the hospital supply violates Health and Safety Code sections 11170, 11173 and
15 11350, constitutes unprofessional conduct within the meaning of Code section 2762(a), and
16 provides grounds for disciplinary action under Code section 2761(a). The circumstances are as
17 follows:

18 a. In May 2008, respondent was employed as a registered nurse and worked at
19 Alta Bates Summit Medical Center, in Berkeley. On or about May 8, 2008, respondent admitted
20 to his manager, Lynda Burrell, the Patient Care Manager of Medical/Surgical Services, that he
21 illegally diverted controlled substances (narcotics). Respondent surrendered the controlled
22 substances and other paraphernalia (Morphine, Lorazepam, Dilaudid, Patient Controlled
23 Analgesic vials, half-empty vials of IV medication, one-half of a 10mg Methadone tablet and one
24 3 ml syringe) that he had in his possession to the manager during a reasonable suspicion interview
25 and a drug screen test. During the interview, respondent admitted that he had a drug addiction
26 problem and that he had been in a drug rehabilitation program recently. A subsequent
27 investigation revealed that respondent was diverting waste removed from sharps containers
28 (containers that are filled with used medical instruments, including needles) in the hazard bin at

1 his worksite. On May 14, 2008, Ms. Burrell sent a termination letter to respondent, advising him
2 that his employment with Alta Bates Summit Medical Center was terminated due to drug
3 diversion.

4 b. On or about May 16, 2008, Ms. Burrell submitted a complaint to the Board
5 regarding respondent's conduct during his employment, and his admissions on May 8, 2008, at
6 Alta Bates Summit Medical Center. On or about July 24, 2008, the Board referred to the Division
7 of Investigation (DOI) a request for an investigation concerning the allegations against
8 respondent.

9 c. The Alameda District Attorney's Office filed criminal charges against
10 respondent based, in part, on the allegations contained in the DOI investigation report.

11 **SIXTH CAUSE FOR DISCIPLINE**
12 **(Unprofessional Conduct-Unlawful Possession of Controlled Substances)**
13 **(Bus. & Prof. Code § 2761(a))**

14 29. Complainant realleges the allegations contained in paragraph 28 above,
15 and incorporates them herein by reference as if fully set forth.

16 30. Respondent's conduct in unlawfully obtaining and possessing controlled substances
17 by diversion from the hospital supply, as alleged in paragraph 28 above, constitutes
18 unprofessional conduct and provides grounds for disciplinary action under Code section 2761(a).

19 **SEVENTH CAUSE FOR DISCIPLINE**
20 **(Unprofessional Conduct-Unlawful Possession of Hypodermic Needle)**
21 **(Bus. & Prof. Code § 2761(a))**

22 31. Complainant realleges the allegations contained in paragraph 28 above,
23 and incorporates them herein by reference as if fully set forth.

24 32. Respondent is subject to disciplinary action under section 2761(a) for unprofessional
25 conduct in that he was in possession of a hypodermic needle, in violation of Business and
26 Professions Code section 4140.

27 ///

28 ///

///

1 **EIGHTH CAUSE FOR DISCIPLINE**
2 **(Gross Negligence and/or Incompetence)**
3 **(Bus. & Prof. Code § 2761(a)(1))**

4 33. Complainant realleges the allegations contained in paragraph 28 above,
5 and incorporates them herein by reference as if fully set forth.

6 34. Respondent has subjected his license to disciplinary action for unprofessional conduct
7 under Code section 2761(a)(1), in that he committed gross negligence and/or incompetence
8 within the meaning of California Code of Regulations, title 16, sections 1442 and 1443
9 respectively as described in paragraph 28, above.

10 **NINTH CAUSE FOR DISCIPLINE**
11 **(Conviction)**
12 **(Bus. & Prof. Code § 2761(f))**

13 35. Complainant realleges the allegations contained in paragraph 28 above,
14 and incorporates them herein by reference as if fully set forth.

15 36. Respondent has subjected his license to disciplinary action under sections 490 and
16 2761(f) of the Code in that on or about November 30, 2009, in a criminal proceeding entitled
17 *People of the State of California v. Michael Brandon Miyaki* in Alameda County Superior Court,
18 Case Number 551383 (later changed to 162222), respondent was convicted by plea of nolo
19 contendere for violation of Health and Safety Code section 11173(a) (illegally obtaining
20 controlled substances). The imposition of sentencing was suspended, and respondent was placed
21 on a three-year conditional probation upon terms, which included, but were not limited to, the
22 following: obeying all laws; availing himself to personal, vehicle, property and residential
23 searches, participating in a drug treatment program; and paying a fine in the amount of \$470.00.
24 This crime is substantially related to the qualifications, functions and duties of a registered nurse.

25 **TENTH CAUSE FOR DISCIPLINE**
26 **(Conviction)**
27 **(Bus. & Prof. Code § 2762(c))**

28 37. Complainant realleges the allegations contained in paragraphs 28 and 36 above,
and incorporates them herein by reference as if fully set forth.

1 38. Respondent's conviction based on unlawfully obtaining and possessing controlled
2 substances constitutes unprofessional conduct within the meaning of Code section 2762(c), and
3 provides grounds for disciplinary action under Code section 2761(a).

4 **PRAYER**


5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Registered Nursing issue a decision:

7 1. Revoking or suspending Registered Nurse License Number 552674, issued to
8 Michael Brendan Miyaki.

9 2. Ordering Michael Brendan Miyaki to pay the Board of Registered Nursing the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: 3/16/10


LOUISE R. BAILEY, M.D., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

14
15
16
17
18 SF2009404661
90137111.doc
19
20
21
22
23
24
25
26
27
28